

II. REMARKS

A. Status of the Claims

Claims 25-35 were pending in the case at the time of the Office Action. Claims 25 and 30 have been amended and new claims 36-38 have been added. Support for the amended and new claims can be found in the specification at, for example, page 3, first paragraph; page 4, fifth full paragraph; page 5, paragraphs 3-5; page 6, fourth full paragraph; page 7, second paragraph; and in Example 1. Thus, claims 25-38 are currently under consideration.

B. Objections to the Specification

The Abstract is objected to for being more than one paragraph. The Abstract has been amended in this regard, and withdrawal of the objection is respectfully requested.

The specification is objected to for the use of the term "novel." The Action suggests removal of this term, asserting that:

Once the determination of the novelty of a claimed invention has been established and the disclosure of the invention made public and/or patented, the claimed invention is no longer novel, since the scope of the invention no longer embraces what is considered "novel". Thus, the incorporation of "novel" into the language of the specification is not appropriate.

Action, page 3. Applicants cannot discern why disclosure of the invention to the public would render the scope of the invention not novel as originally filed. The Action has not set forth any evidence that the present invention is not novel. Moreover, nothing in MPEP § 607.01(b), cited by the Action for support, suggests that this term is inappropriate. As such, Applicants respectfully request that the objection be withdrawn.

The use of trademarks in the application has been noted by the Action. It does not appear that the Action alleges that any such use is improper, or that the specification is objected to in

this regard. No amendments to the specification have been made with respect to the recitation of any trademark as the application is believed to be in compliance with MPEP § 608.01(v).

C. The Rejections Under 35 U.S.C. § 112, First Paragraph, Are Overcome

1. The Written Description Rejection Is Overcome

Claims 25-35 are rejected under 35 U.S.C. § 112, first paragraph, as failing the written description requirement. In particular, the Action contends that the Applicant fails to adequately describe the genus of agents that may be prepared from plant seedlings enriched with electrolytes. Applicants traverse this rejection.

The term “agent” has been deleted from current claim 25, which now recites, in part, “a preparation comprising wheat seedlings or processed wheat seedlings, wherein the wheat seedlings are enriched with electrolytes.” Such a preparation is adequately supported in the specification as originally filed at, for example, page 3, first paragraph; page 6, fourth full paragraph, and page 7, second full paragraph. In addition, support may be found in Example 1, where a preparation comprising dried wheat seedlings enriched with electrolytes was used in the study. As such, Applicants respectfully request the rejection be withdrawn.

2. The Enablement Rejection Is Overcome

The Action also rejects claims 25-35 under 35 U.S.C. § 112, first paragraph, for lack of enablement. In general, the Action alleges that the specification does not enable one to make and use the claimed method with any and all types of agents prepared from any and all types of plant seedlings enriched with electrolytes.

Applicants generally traverse, but note that current claim 25 recites “a preparation comprising wheat seedlings or processed wheat seedlings, wherein the wheat seedlings are enriched with electrolytes.” As discussed above, such a preparation is disclosed in the specification at, for example, page 3, first paragraph; page 6, fourth full paragraph; page 7,

second full paragraph; and in Example 1. Accordingly, the Action's assertions regarding the alleged lack of enablement of any and all types of agents prepared from any and all types of plant seedlings enriched with electrolytes are moot in view of the current claim language. Withdrawal of the enablement rejection is therefore respectfully requested.

D. The Indefiniteness Rejection Is Overcome

Claims 25-35 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the phrase "obtaining an agent prepared from plant seedlings enriched with electrolytes comprised in a pharmaceutical composition" is alleged to be unclear because it is unclear what is being "enriched with electrolytes."

Current claim 25 recites "a preparation comprising wheat seedlings or processed wheat seedlings, wherein the wheat seedlings are enriched with electrolytes." As disclosed in the specification, a seedling enriched with electrolytes refers to the content of electrolytes in the seedlings themselves. *See e.g.*, page 4, fifth full paragraph; page 7, second paragraph. Seedlings can be enriched with electrolytes by, for example, germinating the seeds in an electrolyte solution. *See e.g.* page 5, paragraphs 3 and 4. A proper evaluation of the claims under the second paragraph of 35 U.S.C. § 112 requires that the claims be read in light of the specification as interpreted by one of ordinary skill in the art. In view of the above, the phrase "a preparation comprising wheat seedlings or processed wheat seedlings, wherein the wheat seedlings are enriched with electrolytes" would be clear to one of ordinary skill in the art in light of the specification. Applicants therefore respectfully request the indefiniteness rejection be withdrawn.

E. Conclusion

Should the Examiner have any questions, comments, or suggestions relating to this case, the Examiner is invited to contact the undersigned Applicant's representative at (512) 536-5654.

Respectfully submitted,



Travis M. Wohlers
Reg. No. 57,423
Attorney for Applicant

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
512.536.3035 (voice)
512.536.4598 (fax)

Date: 10/04/07